

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

OP.No. 7595 of 1999(D)

PETITIONER:

K.THULASEEDHARAN PILLAI,
SAROVARAM, PERUMPUZHA, KOLLAM.

BY ADV. SRI.P.B.SURESH KUMAR

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE PRINCIPAL SECRETARY TO GOVERNMENT,
HIGHER EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
3. THE DIRECTOR OF COLLEGIATE EDUCATION,
THIRUVANANTHAPURAM.
4. THE PRINCIPAL, N.S.S. COLLEGE, NILAMEL,
KOLLAM.

BY GOVERNMENT PLEADER SRI. K.BHASKARAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 13/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT DATED 30-3-1998.

EXT.P2: COPY OF THE COMMUNICATION ISSUED BY THE SECRETARY TO GOVERNMENT TO THE THE PETITIONER DATED 23.1.1999.

EXT.P3: COPY OF THE COMMUNICATION ISSUED BY THE SECRETARY OF N.S.S.COLLEGE'S CENTRAL COMMITTEE, TO THE PETITIONER DATED 1.2.1999.

EXT.P4: COPY OF THE COMMUNICATION ISSUED BY THE FOURTH RESPONDENT TO THE PETITIONER DATED 24.2.1999.

EXT.P5: COPY OF THE RELIEVING ORDER ISSUED BY THE FOURTH RESPONDENT TO ME DATED 31.3.1999.

EXT.P6: COPY OF THE COMMUNICATION ISSUED BY THE SECOND RESPONDENT TO THE THIRD RESPONDENT DATED 15.4.2000.

TRUE COPY

P.A.TO JUDGE

T.R.RAMACHANDRAN NAIR, J.

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O.P.No.7595 of 1999-D.

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Dated this the 13th day of June, 2007.

J U D G M E N T

The petitioner was working as Professor in NSS College, Nilamel. He retired from service on 31-3-1999 as evidenced by Ext.P5 on attaining the age of superannuation. The actual date of birth of the petitioner is 30-3-1944 whereas his date of birth in the SSLC book was 21-8-1942. This was the entry in his service records also. Therefore, as per the original entry his date of superannuation was on 21-8-1997.

2. The entry in the SSLC book was corrected on 16-3-1995. Thereafter he made an application to the second respondent through the Principal of the College to correct the date of birth in the service records. This was rejected initially by the Government on the ground that the same was belated. Apparently the Government did so on the basis of the Government Orders as are applicable to the government servants which evidently was not correct, in the light of the fact that the case of the petitioner is governed by the provisions of the Kerala University (Conditions of service of teachers and members of non-teaching staff) First Statutes, 1979. As per Statute 1979, the teachers of private colleges can apply for correction or

alteration of date of birth in the service records any time from two years preceding their retirement. In this case his application was made two years prior to his retirement.

3. The petitioner filed OP.No.12620/1997 challenging the decision rejecting the application filed by the petitioner which was dismissed. In WA.No.567/1998 the petitioner was directed to move the government itself. Thereafter, the petitioner again approached the government by Ext.P1 representation. The Government favoured him by passing Ext.P2. Para.3 of the above order states as follows:

“Government have re-examined the case in detail in and are pleased to order that since the request from the petitioner is found to be admissible as per the provisions of Statute 79 of the Kerala University First Statutes, the date of birth of Shri.K.Thulaseedharan Pillai be corrected from 21-8-1942 to 3-9-1944 in the service book of the incumbent in compliance of the judgment of the Honourable High Court read above.”

Pursuant to the said order he was reinstated in service on 30-3-1999 and he attained the age of superannuation on 31-3-1999.

4. Even though his entitlement for pay and allowances was raised before the Government for the period from 1-4-1998 to 29-3-1999, by Ext.P6 it was ordered that the above period may be reckoned for pensionary benefits only and salary for two days ie.30-3-1999 and 31-3-1999 alone be ordered to be paid. Aggrieved by the denial of the salary and allowance for the above

said period, this original petition is filed.

5. Heard counsel for the petitioner Shri.P.B.Suresh Kumar and the Government Pleader.

6. It was argued that the date of birth was corrected on 16-3-1995, which was well ahead of two years prior to his retirement. Being a member of teaching staff he continued upto 31-3-1998. He was denied the period of service from 1-4-1998 till 31-3-1999, purely because of the delay on the part of the respondents. His application earlier filed was rejected wrongly as the relevant First Statute was not considered by the Government at that time. The learned counsel, therefore, points out that in view of Ext.P2 order as the correction in the service records have been allowed and as there was no fault on the part of the petitioner the salary and allowances for the period in question cannot be denied to him. The learned counsel placed reliance upon the decision of this Court reported in *Narayana Menon v. State of Kerala* (1978 KLT 29) and in *Eapen v. Union of India* (1979 KLT 861) in support of the said plea. In 1978 KLT 29 it was held that purely because of the mistake of the government the government servant cannot be denied his claim for arrears of salary when he did not get the due promotion. It was laid down as follows:

“No one can be penalised for no fault of his. Suppose a Government servant was reverted illegally or his services wrongly terminated and such reversion or termination is

subsequently held to be wrong by a court of law and he is directed to be promoted or reinstated, could it be contended that such government servant is not entitled to the remuneration for the period during which he was under illegal reversion or illegal termination. The Government cannot take advantage of a mistake committed by them or an order passed by them in illegal exercise of their power. A Government servant cannot be said to have forfeited his claim for arrears of salary when he did not get his due promotion for no fault his.”

The same principle will apply here also. The above position was reiterated by a Division Bench in *Sivarajan v. State of Kerala* (1993(2) KLT 287).

7. A similar question as that of the one arising here was considered by a Division Bench of this Court in 1979 KLT 861. That was a case of alteration of date of birth and while considering the claim for reinstatement in service with all consequential benefits it was declared in para.13, as follows:

“13. The fact that the service of the Petitioner has been terminated during the pendency of the writ petition on superannuation on the basis of the existing entry regarding date of birth contained in his service register will not disentitle him to relief, because, in case it is ultimately found that the request of the petitioner for alteration of his date of birth deserves to be allowed, he will be entitled to be reinstated in the service with all consequential benefits.”

8. This is a case where it cannot be said that there was a fault on the part of the petitioner. His application for correction of date of birth in the SSLC Book was allowed before two years of his retirement and his application to correct the entry in service records was well in time. Going by the Statute 1979, correction of date of birth in service records in such a case is legally permissible. This was agreed by the Government as per Ext.P2 also. It can be seen that the petitioner was moving the authorities well in time to get the entry in the service records corrected. Therefore, it is not a case where there was any fault on the part of the petitioner. He cannot be penalised for the mistake committed by Government at the first instance. Consequently, the petitioner is entitled for all the service benefits for the period from 1-4-1998 to 29-3-1999 including the salary and other allowances and it is declared so. Therefore, there will be a direction to the respondents to disburse the salary and allowances for the period from 1-4-1998 to 29-3-1999 within a period of four months from the date of receipt of a copy of this judgment.

The original petition is disposed of as above.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-